

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Petition of the Inmate Calling) RM-8181
Services Providers Task Force)
For Declaratory Ruling)
_____)

OPPOSITION OF BELLSOUTH

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TABLE OF CONTENTS

SUMMARY.....	i
I. INTRODUCTION.....	1
A. Commission Policies Require Inmate-Only Payphones To Be Treated Like Other Public Payphones For Regulatory Purposes.....	2
B. Neither The Type Nor Location Of The Functions And Features Typically Associated With Inmate-Only Payphone Service Requires CPE Treatment.....	5
C. Facts Set Forth In The Petition Do Not Support The Conclusion That Enhanced Services Are Being Provided As Part Of LEC Inmate- Only Payphone Services.....	8
D. Granting The Petition Would Put BOC Inmate-Only Service Providers At An Unfair Competitive Disadvantage As Compared To Non-BOC Service Providers.....	9
CONCLUSION.....	11

SUMMARY

The petition should be denied. From a policy standpoint, inmate-only payphone service cannot be distinguished from other local exchange carriers' (LECs) payphone services. The key policy question is whether the inmate user can separately select, combine, or pay for the terminal device and transmission line used to complete calls. The answer is that he or she cannot. Thus, as with other LEC provided payphone service, the telephone equipment and transmission line are inseverable and logically integrated as a regulated end-to-end service.

The petition also relies upon the erroneous notion that the types of features typically associated with inmate-only payphone service are either inherently CPE functions or enhanced services. The petition further contends that the location of some feature functionality in adjunct devices at customer premises rather than in the inmate-only payphone instrument, supports a finding that the equipment should be treated as CPE. None of these arguments are supported by an analysis of the facts and the Commission's policies.

The Commission's decision authorizing the CPE payphone exclusion clarified that adding new intelligence to LEC provided payphone service is allowed under the exclusion, and that it is irrelevant whether that intelligence is placed in the payphone set, in some other device, or in the central office. Further analysis shows that the features

highlighted in the petition are designed to prevent fraud and network service abuse, functions which are properly classified as regulated and not enhanced services under the Commission's policies. The only arguable exception to this conclusion, voice mail and answering service, involves one isolated instance which, even if true, would not support a finding that such functionality is typically offered as part of regulated inmate-only services.

Finally, BellSouth shows that due to current MFJ restrictions, granting the petition would put BOC inmate-only service providers at an unfair competitive disadvantage as compared to non-BOC service providers. The Commission should not deregulate inmate-only payphone instruments under any circumstances until an alternative mechanism is in place that will allow BOCs to recover the interstate access expenses associated with inmate-only payphone sets in a manner that puts BOCs on an equal footing with competitors.

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OPPOSITION OF BELL SOUTH

BellSouth Telecommunications, Inc., ("BellSouth")
hereby submits its opposition to the above-referenced
Petition filed on February 2, 1992, ("Petition").

I. INTRODUCTION

The Petition asks for a declaratory ruling that
specialized payphones for inmate-only service offered by
local exchange carriers (LECs) are customer premises
equipment (CPE), and that certain inmate-only services
offered by LECs are enhanced services.

There are essentially four basic arguments advanced in
support of the Petition. First, the Petition argues that
inmate-only payphones are not available to the general
public, and, therefore, cannot be treated like other public
payphones for regulatory purposes.¹ Second, the Petition
argues that inmate-only phones are further distinguishable
from public payphones because of the highly specialized

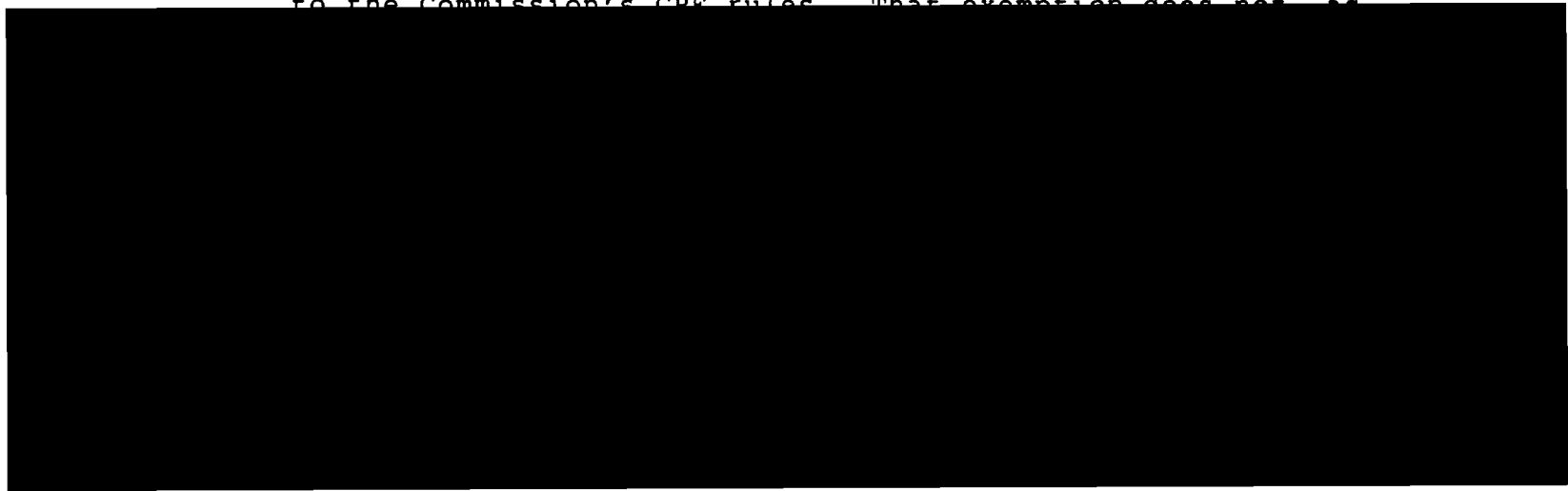
¹ Petition at 12.

functions and features required by correctional facilities.² Third, the Petition claims that the placement of additional hardware at customer premises between the inmate-only payphones and the central office is tantamount to incorporating CPE into the network service.³ Fourth, the Petition contends that a number of features offered as part of inmate-only service are enhanced rather than basic services under the Commission's Computer II rules.⁴

For reasons explained below, the above arguments are without merit and the Petition should be denied. The Petition is not supported by an objective analysis of the relevant facts or by the Commission's policies underlying the CPE payphone exclusion. Furthermore, granting the Petition would give non-BOC inmate-only payphone service providers an unfair competitive advantage in providing this service due to disparate legal restrictions, thereby undermining the Commission's policies promoting competition in payphone service markets.

A. Commission Policies Require Inmate-Only Payphones To Be Treated Like Other Public Payphones For Regulatory Purposes

The Petition reflects a total lack of understanding of the policy reasons supporting the current payphone exemption to the Commission's CPE rules. That exemption does not



the Petition suggests, turn on whether the payphone instrument is made available to a mobile "general" public. As the Commission explained in Tonka Tools,⁵ the key policy reason supporting the CPE payphone exemption focuses on the inability of the user to separately select the telephone instrument used with the network service:

Even if the telephone company describes the service as "semi-public" and collects a charge from a subscriber such as a bar or restaurant, the primary customer of this pay telephone equipment for Computer II regulatory purposes is still the general public or some segment thereof. As to these customers or users the telephone instrument and line are necessarily integrated. The user of these devices pays a single charge in order to place a call from a pay telephone at a public or semi-public location. The instrument and the pay telephone service are not severable from the customer's perspective. . . . [t]he customer cannot separately select, combine or pay for the terminal device and transmission line which are used to make the call. In this sense, the pay telephones and transmission capacity provided by AT&T and the BOCs are logically an integrated offering and these carriers should be permitted to provide them as an end-to-end service.⁶ (emphasis added)

What distinguishes inmate-only and other payphone instruments from other CPE is that from the perspective of the user, the telephone instrument and line are necessarily integrated. In other words, the user of the instrument does not have the opportunity, short of moving to another

⁵ Petition for Declaratory Ruling of Tonka Tools, Inc. and Southern Merchandise Corp. regarding American Telephone and Telegraph Provision of Coinless Pay Telephones, 58 RR2d 903 (1985) ("Tonka Tools").

⁶ Id. at para. 12.

location, to separately select or pay for the terminal device and transmission line. The same holds true for inmate-only payphone service.

Inmates represent a unique segment of the general public, temporarily detained in a government correctional facility. More importantly, from the inmate user's perspective, the inmate-only instrument and transmission service are not severable. Indeed, inmates are less likely to be able to choose CPE alternatives than other payphone users because they are typically prohibited from leaving the correctional facility. Since the inmate-only payphone instrument and transmission service are not logically severable from the inmate's perspective, these instruments clearly fall within the Commission's CPE payphone exclusion.

The argument that the Commission's determination that a correctional institution providing inmate-only phones is not an "aggregator" under the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") supports the Petition is also misplaced.⁷ The definition of "aggregator" under TOCSIA was found by the Commission to include a number of service applications that involve telephone instruments that do not qualify for the CPE payphone exclusion, including hotel, motel, university and other service

⁷ See, Report and Order, Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, 6 FCC Rcd 2744 (1991), recon. denied in part and clarified in part, 7 FCC Rcd 3882 (1992).

arrangements.⁸ The simple fact is that whether or not a service provider is an "aggregator" under TOCSIA is not relevant to the question of whether the service instrument is or is not CPE.

B. Neither The Type Nor Location Of The Functions And Features Typically Associated With Inmate-Only Payphone Service Requires CPE Treatment

The Petition contends that since inmate-only payphones typically include "specialized" features, they should be treated as CPE.⁹ According to the Petition, these specialized features include: limiting the types of calls which can be placed from inmate-only phones to collect calls; restricting calls by time of day, or by call duration; automatic disconnection after allotted time has expired; use of PIN authorization numbers; restrictions so that inmates may call only pre-designating numbers, or alternatively, restrictions that preclude calls to specified numbers, such as judges, witnesses, or police; calls to public defenders required to be available at no charge; call recording and monitoring capabilities on a selective basis; storage of call detail information to use in investigations and in preventing abuse or harassment; and specialized reports.¹⁰

⁸ Id. at para. 16.

⁹ Petition at 4.

¹⁰ Id. at 5-6.

All of the above features represent legitimate payphone network service functions. Without exception, these features are designed to prevent network service fraud and abuse. Regulated screening and blocking functions are used extensively throughout the industry to help prevent pay telephone fraud and public harassment. It is absurd to argue that the provision of these features in a correctional facilities environment, where the need to protect the public and network service providers from inmate abuse is particularly acute, somehow precludes inmate-only payphones from qualifying under the CPE payphone exclusion. This is tantamount to arguing that there can be only one type of payphone service, central office implemented coin service, and that the addition of any other service intelligence renders the telephone instrument CPE.

In Tonka Tools, the Commission rejected the notion that adding intelligence to LEC-provided payphone devices would render them CPE:

As is discussed below, our analysis of the proper regulatory treatment for the non-coin pay telephone devices of the BOCs obtains whether the intelligence for this service is located in the instrument, the central office or both, and whether or not these devices are registered.¹¹

In considering the applicability of Computer II to the newer, more innovative and technologically advanced coin and coinless pay telephones, some of which do not rely upon central office facilities and interaction, we conclude that the pay telephone exclusion does not rest upon

¹¹ Tonka Tools at n.28.

considerations of technical severability alone. Regardless of the method of payment or operational characteristics of these newer devices, they have not changed in one important respect; the equipment and transmission capacity are not logically severable.¹²

Likewise, the argument that some of the intelligence may be contained in separate devices located on the customer's premises does not change the regulatory status of the service or those devices. As noted in the above quote, the key question is whether the equipment and transmission functions are logically severable from the user's perspective. The actual location of the payphone intelligence is irrelevant to the regulatory analysis.

BellSouth's decision to locate payphone intelligence in the central office, in the payphone instrument or in an adjunct device depends on economic and technical factors. BellSouth uses an adjunct device located on the customer premises when it is more economical to do so than it is to buy a new set equipped with such functionality or to add that functionality to an existing payphone set. Also, while such devices can be placed in the central office or at the customer's premises, some times the location of the device at the customer's premises is necessary to overcome technical problems associated with delivering inmate-only services over subscriber line carrier (SLC) transmission systems. In other words, the decision of whether or not to

¹²Tonka Tools at para. 12.

use adjunct devices is driven by economic and network design factors, and in no way affects the CPE marketplace.

C. Facts Set Forth In The Petition Do Not Support The Conclusion That Enhanced Services Are Being Provided As Part Of LEC Inmate-Only Payphone Services

The only service described in the Petition that is even arguably an enhanced service is the voice mail and answering service which Pacific Bell "allegedly" proposed to provide in Santa Clara County, California.¹³ Even here, the Petition does not contain sufficient facts from which one can conclude that the service is in fact being offered as part of a regulated inmate-only service. Moreover, if one assumes the allegation to be true, the Commission's current policies do not preclude a state from allowing enhanced services to be offered on a tariffed basis as part of a regulated intrastate service offering. Furthermore, the Petition points only to this one, isolated incidence in which an enhanced service might be associated with an inmate-only service offering. This hardly supports a finding that enhanced services are regularly being offered as part of LEC provided inmate-only services.

The other functions which the Petition claims represent enhanced services functionality (call blocking, call detail, timing, use of access (PIN) codes, etc.) clearly qualify as

¹³ Petition at 21.

adjunct to basic service functions under the Commission's NATA/Centrex Order.¹⁴

Under the Commission's NATA/Centrex Order, functionality which otherwise meets the technical definition of an "enhanced service" is treated as basic if it facilitates the use or management of basic network services without changing their fundamental nature. The features described in the Petition clearly fall within this adjunct to basic exception. All of these features are designed to prevent telephone service fraud, to avoid harassment of the public through misuse of telephone services, to provide network security and to avoid the types of network service abuse that experience has shown to be a special problem at correctional facilities. These features and functions do not change the fundamental nature of inmate-only payphone service, they simply ensure there is less fraud and abuse by inmates when using that service.

D. Granting The Petition Would Put BOC Inmate-Only Service Providers At An Unfair Competitive Disadvantage As Compared To Non-BOC Service Providers

As with other payphone service applications, BOCs currently recover expenses associated with providing access to interstate carriers via inmate-only payphones through federal access charges. Private payphone providers, on the

¹⁴ North American Telecommunications Ass'n, 101 FCC 2.d 349 (1985) ("NATA/Centrex Order"), aff'd on recon., 3 FCC Rcd 4385 (1988).

other hand, typically recover these expenses directly from interexchange carriers who pay them commissions or charge the private payphone provider a reduced rate in return for carrying interexchange calls from the inmate-only payphone instrument.

If the Commission were to grant the Petition, BOCs would be severely restricted in their ability to recover the expenses associated with providing access to interstate services through inmate-only payphone instruments. This is because the MFJ severely limits the scope of permissible business arrangements between the BOCs, including BellSouth, and interexchange carriers that provide interexchange services from these and other payphones.¹⁵ In order to compete effectively in this market under current MFJ restrictions, BellSouth must be allowed to recover these expenses through regulated access charges.

Regardless of how it decides the issues raised in the Petition, the Commission should not deregulate inmate-only payphone instruments until an alternative mechanism is in place that will allow BOCs to recover these access expenses. Otherwise, BellSouth and other BOCs will be placed at an unfair competitive disadvantage as compared to those

¹⁵ For example, the MFJ restricts a BOC's ability to share revenues with an interexchange carrier. See, e.g., United States v. Western Electric Co., Inc., 578 F.Supp. 653 (D.D.C. 1983). See, also, United States v. GTE Corporation, Civil Action No. 83-1298 (HHG), 1988-2 Trade Reg. Rep. CCH 60,058, Memorandum (D.D.C. Dec. 23, 1988).

competitors who are not similarly restricted by the MFJ. Under such circumstances, BellSouth would no longer be able to effectively compete for the opportunity to provide inmate-only service. This result would undermine the Commission's pro-competitive policies by essentially eliminating a viable and willing competitor from the market solely due to disparate regulatory/legal treatment. Such a result clearly is not in the public interest.

CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to deny the Petition.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Thompson Rawls
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Its Attorneys

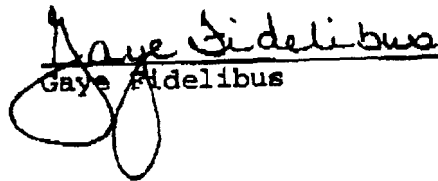
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Date: March 8, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of March, 1993 serviced all parties to this action with a copy of the foregoing OPPOSITION by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

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